

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

ERNEST MELO, *on behalf of himself and
all others similarly situated,*

Plaintiff,

v.

ZUMPER, INC.

Defendant.

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Civil Action No. 3:18-cv-00756

**PLAINTIFF’S MEMORANDUM IN SUPPORT HIS
MOTION FOR AN ENLARGEMENT OF TIME
TO RESPOND TO DEFENDANT’S
MOTION TO STAY PROCEEDINGS PENDING ARBITRATION**

COMES NOW the Plaintiff, Ernest Melo, by counsel, and in support of his Motion for an Enlargement of Time to file his Response to Defendant’s Motion to Stay Proceedings Pending Arbitration, he states as follows.

On December 10, 2018, Defendant filed its 30 page Motion to Stay Proceedings Pending Arbitration (Doc. 9) and Memorandum in Support (10). In support of its Motion, the Defendant attached a 10 page Affidavit of its Chief Business Officer who claims, under penalty of perjury, to have personal knowledge of the numerous statements set forth in his Affidavit, including, for example, precisely what Plaintiff supposedly saw on his cell phone more than a year ago, what Plaintiff “tapped” or didn’t tap, and which windows on his phone would have been visible, as opposed to those which would have been partially obscured. This Affidavit itself contained seven

exhibits, spanning 95 pages, that Mr. Coyne relies on to support his “personal knowledge”, including screen-prints from third party Samsung’s website (viewed on December 7, 2018), in an effort to testify - under oath - about what he knows to have transpired on Plaintiff’s cell phone more than a year prior to the date that Samsung’s website was accessed and Mr. Coyne’s Affidavit was drafted and signed. Plaintiff intends to oppose this motion on a number of legal and factual bases, but his opposition is presently due on Friday, December 21, 2018, since the Court is closed on December 24, 2018. Additionally, Plaintiff’s Counsel’s office will be closed for the holidays from December 24 to December 26 and from December 31 through January 1, 2019.

Fed. R. Civ. P. 6(b) provides that this Court may, for good cause shown, extend a deadline upon request from a party prior to the expiration of the original deadline. This motion has been filed several days in advance of the current deadline for Plaintiff’s opposition brief, and he submits that good cause for the requested extension exists particularly within this context, given the serious nature of the Defendant’s motion, which, if granted, would impact Plaintiff’s Seventh Amendment right to a jury trial, deny him his day in court, and require him to proceed before a commercial arbitration entity, pre-selected by the Defendant, in a secret proceeding. The stakes could not be higher for the Plaintiff and the putative class members.

For good cause shown, and considering the timing of the holidays and the complexity of the Defendant’s Motion, the Plaintiff respectfully requests that this Court grant his Motion to enlarge the time within which to file Plaintiff’s response to Defendant’s Motion to Stay Proceedings Pending Arbitration (Docket No. 9) from December 21, 2018 until January 14, 2019.

Respectfully submitted,

ERNEST MELO

/s/Leonard A. Bennett

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of December 2018, I have electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record:

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